

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation: *El Kouchi v. Canada (Canada Border Services Agency)*, 2013 CART 40

Date: 20131223

Docket: CART/CRAC-1754

BETWEEN:

Bouchaïb El Kouchi, Applicant

- and -

Canada Border Services Agency, Respondent

[Translation of the official French version]

BEFORE: Donald Buckingham, Chairperson

In the matter of an application made by the applicant, pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of a violation of paragraph 34(1)(b) of the *Health of Animals Regulations*, alleged by the respondent.

DECISION

[1] In accordance with the directions of the Federal Court of Appeal, set out in its decision dated December 18, 2013, indexed as *Attorney General of Canada v. Bouchaïb El Kouchi* (2013 FCA 292; docket A-145-13), the Canada Agricultural Review Tribunal (Tribunal), by order, determines that the applicant committed the violation indicated in Notice of Violation no. 3961-12-M-0124, dated April 25, 2012, and is liable to pay the respondent a monetary penalty of \$800 within thirty (30) days after the day on which this decision is served.

For reconsideration from the Federal Court of Appeal,
according to its decision dated December 18, 2013.

REASONS

[2] The respondent, the Canada Border Services Agency (Agency), filed an application for judicial review at the Federal Court of Appeal (FCA) of the Tribunal's decision dated March 28, 2013, in the matter of *Bouchaïb El Kouchi v. Canada Border Services Agency* (CART/CRAC-1630) (*El Kouchi (FCA)*).

[3] On December 18, 2013, the FCA rendered its decision and indicated in paragraph 16 that [unofficial translation of sentence before colon] "In *Castillo (FCA)* [*Canada (Border Services Agency) v. Mario Castillo*, 2013 FCA 271], our Court very clearly decided in paragraph 24:

Mr. Castillo may have been unaware that the chicken was in his luggage, but this is of no assistance to him given a plain reading of the provisions and the clear intention of Parliament to provide for an absolute liability regime for these types of violations. As this Court has noted before, the AMP system can be harsh (Westphal-Larsen [2003 FCA 383] [TR: addition in the French version] at paragraph 12) but it is clear that Parliament intended that it be so, given the important stated objective of protecting Canada from the introduction of foreign animal diseases.

[4] At paragraph 19 in *El Kouchi (FCA)*, the Court states that: "*In my opinion, there is no valid reason not to apply the reasoning of our Court in Castillo (FCA) here.*" [unofficial translation]

[5] At paragraph 20 in *El Kouchi (FCA)*, the Court also states that "*Our Court has stated in the past that the current regime is very punitive, even draconian: Doyon [Doyon v. Attorney General of Canada, 2009 FCA 152] at paragraph 21. Whether or not it agrees with this regime or the way in which it is enforced, the Tribunal must enforce the law.*" [unofficial translation]

[6] Therefore, the FCA allowed the application for judicial review, quashed the Tribunal's decision dated March 28, 2013, and remitted the matter to the Tribunal "for the Tribunal to carry out a new determination in accordance with these reasons" [unofficial translation] (paragraph 21 in *El Kouchi (FCA)*).

[7] Given the findings in *El Kouchi (FCA)*, the Tribunal reviewed the matter and is now of the opinion that the Agency proved all of the elements of the violation. The Tribunal therefore concludes that Mr. El Kouchi violated paragraph 34(1)(b) of the *Health of Animals Regulations*, as stated in the initial Notice of Violation no.3961-12-M-0124, dated April 25, 2012. Consequently, the Tribunal determines that Mr. El Kouchi is liable to pay the Agency a penalty of \$800 within thirty (30) days after the day on which this decision is served.

[8] The Tribunal wishes to inform Mr. El Kouchi that this violation is not a criminal offence. After five years, he will be entitled to apply to the Minister to have the violation removed from his record, in accordance with section 23 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*:

23. (1) Any notation of a violation shall, on application by the person who committed the violation, be removed from any records that may be kept by the Minister respecting that person after the expiration of five years from

(a) where the notice of violation contained a warning, the date the notice was served, or

(b) in any other case, the payment of any debt referred to in subsection 15(1),

unless the removal from the record would not in the opinion of the Minister be in the public interest or another notation of a violation has been recorded by the Minister in respect of that person after that date and has not been removed in accordance with this subsection.

Dated at Ottawa, Ontario, this 23rd day of December, 2013.

Dr. Don Buckingham, Chairperson